IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5809 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

EKTA COOPERATIVE HOUSING SOCIETY LTD.
VERSUS
AHMEDABAD MUNICIPAL CORPORATION

Appearance:
MR HN ACHARYA for MR GM JOSHI for the Petitioner
MR PRASHANT G DESAI for Respondents NO.1 and 3
None present for Respondent NO.3

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 09/05/2000

C.A.V. JUDGMENT

Heard the learned counsel for the parties.

2. The facts of the case are that the petitioner is a registered cooperative housing society at Ahmedabad. The petitioner- Society what it submits is the owner of the land and the allottees i.e. the members are the owners of the superstructure build thereon. The respondent No.3 was allotted tenement No.7 who has started constructing the additional structure without getting the plan sanctioned by the Society from the Ahmedabad Municipal Corporation on land belonging to the Society to which he is not having any ownership. The petitioner - Society filed a Lavad suit before the Board of Nominees and on the prayer of the petitioner, learned Board of Nominees has been pleased to grant injunction on the said construction. The Ahmedabad Municipal Corporation, Ahmedabad has also issued injunction restraining the respondent No.3 from making any construction. In spite of that, the respondent No.3 has construction the second floor on the said superstructure. The petitioner made several representations to the Ahmedabad Municipal Corporation for demolishing the illegal construction put by the respondent No.3 without prior permission or getting the plan sanctioned. When in spite of reminding the Ahmedabad Municipal Corporation, nothing has been done, this petition has been filed by the petitioner before this court. In the petition, the petitioner prayed for issuance of a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction directing the Ahmedabad Municipal Corporation, Ahmedabad to initiate the action against the respondent No.3 in accordance with the provisions of section 260 of the Bombay Provincial Municipal Corporation Act, in furtherance of the injunction granted by it under section 267 of the said Act.

3. Learned counsel for the respondent- Municipal Corporation produced on the record of this special civil application, a zerox copy of the judgment of the Board of Nominees in Lavad case No. 142 of 1996 decided on 8th March, 2000. This judgment is given by the Board of Nominees in the Lavad suit filed by the petitioner against the respondent No.3 in the year 1996. the suit has been decreed in favour of the Society.

4. Learned counsel for the respondent- Ahmedabad Municipal Corporation submitted that once the petitioner has filed the suit against the respondent for all of his illegal activities, and suit has been decreed then this petition is not maintainable. It has next been contended that now the suit has been decreed and the

petitioner may get the decree executed. The petitioner cannot be permitted to avail of two remedies simultaneously.

5. Learned counsel for the petitioner is unable to dispute the fact that the subject matter of this petition and of the suit was identical. Once that fact is admitted and the fact of filing of the suit has also been admitted, I fail to see this action of the petitioner to file this petition before this court. It is true that this petition has been filed seeking direction against the Corporation but nevertheless for this very alleged illegality committed by the respondent NO.3, the petitioner has filed the suit and it cannot be permitted to avail of two parallel remedies, more so, when the suit has been decreed and the petitioner has to go for the execution of the decree.

6. In view of this subsequent development which has taken place, no relief of the nature as prayed for can be granted in this special civil application as the decree passed in favour of the petitioner in the Lavad suit is executable and the petitioner can get it executed.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated. No order as to costs.

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